

## OPINION 117

*rior* does not apply, it has been held that a county cannot be liable to a citizen for injuries sustained as a result of the negligence of a convict working on the roads."

It is therefore my opinion, taking into consideration the cases and authorities above cited, that the State of Indiana would not be liable for payment of losses should an escaped inmate of a state institution break into and enter private property, and remove or destroy any personal property.

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### OFFICIAL OPINION NO. 117

December 23, 1953.

Mr. R. R. Wickersham, State Examiner,  
State Board of Accounts,  
304 State House,  
Indianapolis, Indiana.

Dear Mr. Wickersham:

I have your letter requesting my opinion which reads as follows:

"A county acquired certain parcels of real estate which it acquired either through foreclosure of School Fund mortgage loans or through forfeiture thereof. It is our understanding that these properties were offered as School Fund property and upon failure to sell, the county did pay the School Funds from an appropriation of County Revenue.

"A question has been presented to this office as to the proper law to be followed in disposing of such real estate.

"We request your official opinion on the following questions:

"1. Should property originally belonging to the School Fund, but for which the county has paid and now holds title, be sold under Section 28-254 of Burns'

Indiana Statutes, or should it be sold under the provisions of Sections 26-534 and 26-2008 of these statutes?

“2. Should this property be treated like all other county property now that the School Fund has been reimbursed, and should it be sold by the County Commissioners as other county property is sold, or must it still be treated as School Fund property and proceed under the sections affecting School Funds?”

Section 26-534 of Burns' Indiana Statutes Annotated to which you refer is Section 34, Chapter 154 of the Acts of 1899. This section is a part of a general statute controlling many phases of general county business and affairs. This particular section provides that no sale of any real estate of the county of \$1,000 or more shall take place except pursuant to an ordinance of the council authorizing such sale and fixing the terms and conditions thereof.

Section 28-254 of Burns' is Section 5, Chapter 39 of the Acts of 1899. This section is part of a special act dealing particularly with school fund loans, the foreclosure of the same and the resale of real estate so acquired by the county.

As you will note both of the Acts referred to were passed by the same legislature in 1899, the one being a general Act requiring certain action to be taken by the county council, and the second being a special Act authorizing certain actions by the board of commissioners.

There is a fixed rule of statutory construction that general statutes give way to special statutes upon the same subject matter.

*Kingan Co. Ltd. v. Ossam* (1920), 190 Ind. 554, 133 N. E. 81.

Also the specific provisions of the Act having special reference to a limited and definite part of the subject matter of the general Act passed at the same time will control.

*City of New Albany v. Lemon* (1925), 198 Ind. 127, 149 N. E. 350.

Therefore in applying these rules of construction to the two original Acts, it seems clear that at that time school fund property would be sold in accordance with the procedure set forth in Burns' Indiana Statutes Annotated, Section 28-254, *supra*, which is the special act dealing with school fund loans.

Burns'—Section 26-2008 is Section 8, Chapter 271 of the Acts of 1907, as amended by Section 1, Chapter 226 of the Acts of 1943. This section is part of a statute dealing generally with public buildings and contracts and particularly applied to the sale of public grounds and buildings such as public halls and court houses and other abandoned public buildings. This section provides that the county commissioners shall not be authorized to sell any county property except at public auction and with a required advertising and publication. The 1943 amendment did not change the section except in respect to the length of time required for the advertising.

In 1943 the legislature, apparently recognizing that property acquired by counties under foreclosure of school fund mortgages had been sold under the procedure set forth in Section 28-254, *supra*, passed Chapter 203 (Burns' Indiana Statutes Annotated, Section 28-254a) in which all such sales were legalized. However I wish to point out that at the same session there was also passed Chapter 251 (Burns' Indiana Statutes Annotated, Section 28-201 *et seq.*) which contains rather comprehensive provisions for the handling of school fund loans. This Act is entitled "An Act concerning the loaning of the common school fund, the congressional township school fund, and the permanent endowment fund of Indiana University." Although this Act does not expressly repeal Section 28-254, it does cover the general subject matter of school fund loans, foreclosure of school fund mortgages and the resale of property acquired by such foreclosure and inasmuch as it is the last expression of the legislature on those subjects it would supersede any conflicting provisions of the prior law on the same subject.

*State ex rel. O'Donnell v. Flickinger* (1937), 211 Ind. 361, 7 N. E. (2d) 192;

*De Haven v. Municipal City of South Bend* (1937), 212 Ind. 194, 7 N. E. (2d) 184.

Section 26 of Chapter 251, referred to above (Burns' Indiana Statutes Annotated, Section 28-236) reads as follows:

"In case of no bid for the amount due, the auditor shall bid in the same for the county, and immediately thereafter, the auditor shall draw a warrant payable to the county sheriff for the full amount of the judgment including costs and attorney's fees, the money called for by said warrant to be paid out of the general funds of the county from any moneys not otherwise appropriated, without any previous appropriation having been made therefor. The sheriff shall thereupon issue a certificate of sale or execute a sheriff's deed to the county for the property so mortgaged and foreclosed.

"The sheriff shall thereupon pay to the county treasurer the amount of the principal, interest and attorney's fees included in the judgment, and pay the amount of the costs to the clerk of the circuit court. The amount of such principal and interest so paid to the treasurer shall be posted on the records as a receipt into such funds, and the amount of the attorney's fees shall be posted as a receipt into the general fund of the county.

"As soon as title to the real estate in question is acquired by the county the board of county commissioners shall execute an order for the auditor to proceed to sell such land in the same manner as other land belonging to the county is sold."

In my opinion the last paragraph of the above quoted section would be the proper procedure for the sale by counties of property acquired through the foreclosure of school fund mortgages. Such property should be sold under and pursuant to the Acts of 1943, as found in Burns', Section 28-236, *supra*, which provided for special provision dealing particularly with school loan funds.

In answer to your second question it is my further opinion that this property should be treated like all other county property after the school fund has been reimbursed and that such property should be sold "in the same manner as other land belonging to the county is sold."